Supreme Court, U.S.
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No. 88-473 (3)

in the Supreme Court of the United States of America

OCTOBER TERM, 1988

CHRIS KARSTETER,

Petitioner

vs.

THE GRAHAM COMPANIES f/k/a
THE SENGRA CORPORATION, a Florida corporation,

Respondent

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA THIRD DISTRICT, REVIEW DENIED BY THE SUPREME COURT OF FLORIDA

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STATEMENT OF THE CASE

The Respondent, THE GRAHAM COMPANIES,[1] a Florida corporation, ("GRAHAM"), is the owner of a duplex apartment located in Miami Lakes, Florida, which was leased to MIAMI LAKES INN ATHLETIC CLUB AND GOLF RESORT, INC., a Florida corporation, ("MIAMI LAKES INN"), under a written lease agreement which commenced October 1, 1985, and ended September 30, 1986, and which specified a monthly rent of $730.00. (App. B-22). At all times material, MIAMI LAKES INN used the leased premises to house its employees. (App. K-19).

At the time of the execution of the lease, MIAMI LAKES INN employed an individual named CHRIS KARSTETER and permitted him to reside in the apartment during the period of his employment. CHRIS KARSTETER is the Petitioner herein and shall be referred to as "KARSTETER".

The terms of KARSTETER's employment by MIAMI LAKES INN were set out in a letter dated August 20, 1984, and included a provision that MIAMI LAKES INN would pay KARSTETER a salary at the rate of $37,500.00 per year and would provide housing for him during his employment. (App. B-16). Nothing in the letter of August 20, 1984, however, or any other document, guaranteed a minimum or fixed period of employment; nor did anything in the letter or any other document provide that either GRAHAM or MIAMI LAKES INN would provide housing for KARSTETER *after* his employment was terminated.

On April 21, 1986, MIAMI LAKES INN terminated KARSTETER's employment and paid him a severance fee

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[1]The Graham Companies, formerly known as the Sengra Company, is a Florida corporation which has no parent company, affiliates or subsidiaries except for wholly owned subsidiaries.

of $10,000.00. (App. K-7). MIAMI LAKES INN agreed to continue to pay rent for KARSTETER for the month of May, 1986, but advised him that, as of June 1, 1986, he would have to pay the monthly rent to GRAHAM, as provided in the Lease, if he wished to continue residing on the premises.

MIAMI LAKES INN did not make rental payments after May, 1986. (App. L-24). KARSTETER refused to pay the rent for June, 1986, and refused to vacate. On June 2, 1986, GRAHAM served a statutory Three-Day Notice requiring payment of rent or surrender of possession. (App. A-4). Neither MIAMI LAKES INN nor KARSTETER paid the required rent although KARSTETER continued to remain in possession. (App. L-24).

GRAHAM then filed a complaint in County Court for removal of tenant for non-payment of rent, naming KARSTETER and MIAMI LAKES INN as defendants. (App. A-1). Each defendant was served with a summons containing the following "Cautionary Warning":

> **CAUTIONARY WARNING**
>
> If this is an action for possession of a dwelling unit based upon non-payment of rent and if you interpose any defense to this action other than payment of rent, you must pay into the registry of the County Court the accrued rent as alleged in the attached Complaint or as may be determined by the Court and the rent which accrues during the pendency of these proceedings when due. Your failure to pay rent into the registry of the County Court as stated above constitutes an absolute waiver of your defenses other than payment and the Plaintiff will be entitled to an immediate default.

MIAMI LAKES INN filed an Answer admitting all of the allegations of the complaint. (App. A-10-12). KARSTETER filed an Answer and Affirmative Defenses contending that

KARSTETER should be permitted to remain in possession of the premises, which had been provided to him as part of his employment, until the expiration of the Lease between GRAHAM and MIAMI LAKES INN, on September 30, 1986. KARSTETER admitted that he had been discharged by MIAMI LAKES INN but claimed that he should be allowed to live to the end of the Lease rent-free; his claim was based upon "his understanding" that he would be provided employment on a "per annum" basis and that his housing would be provided on a "per annum" basis as well. (App. N-4).

KARSTETER also filed a Counterclaim against GRAHAM and a Crossclaim against MIAMI LAKES INN. (App. B-5-14). KARSTETER's Counterclaim and Crossclaim are both currently pending in the Circuit Court of the Eleventh Judicial Circuit of Florida and are to be tried before a Jury. (App. L-1-2).

In the proceedings below, GRAHAM filed a Notice of Demand of Payment of Rent *Pendente Lite* into the Registry of the Court pursuant to Florida's Rent Deposit Statute, Florida Statute §83.60(2). (App. F-1-2). This Statute, which has now been modified, provided at the material time as follows:

> In an action by the landlord for possession of a dwelling unit, if a tenant interposes any defense other than payment, the tenant shall pay into the Registry of the Court the accrued rent as alleged in the Complaint or as determined by the Court and the rent which accrues during the pendency of the proceedings, when due. The Court shall notify the tenant of such requirement. Failure of the tenant to pay the rent into the Registry of the Court as provided herein constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default.

KARSTETER refused to deposit any monies into the Registry of the Court. Likewise, KARSTETER did not exercise his right under Florida law to file a Motion for Determination of Amount to be Deposited in the Court Registry. GRAHAM then filed a Motion to Strike the Pleadings of Defendant, KARSTETER, and for Entry of Default. (App. G-1-2).

At a hearing on GRAHAM's Motion on July 9, 1986, the Trial Judge determined that KARSTETER should pay into the Registry of the court $1,460.00. (App. K-5). The Trial Judge gave KARSTETER ten (10) days within which to deposit the money into the Registry or to submit some "mighty convincing case law to the contrary that the deposit was not required." (App. K-6). KARSTETER did not deposit the $1,460.00 into the Court Registry, but filed a Memorandum of Law contending that the statute was unconstitutional. (App. I-1).

On July 22, 1986, a successor Trial Judge heard KARSTETER's argument as to the alleged unconstitutionality of Florida Statutes §83.60(2). The successor Trial Judge did not hold the Statute unconstitutional, but did offer to give KARSTETER yet additional time in which to deposit the $1,460.00 into the Court Registry. (App. K-11). The Trial Court also made clear that "[if KARSTETER did] not choose to put the money into the Registry of the Court, he [would] lose possession, but he [could] still proceed with this cause under the Counterclaim and the Crossclaim". (App. K-12). KARSTETER's counsel declined the Court's offer to extend the time for making the deposit, stating, "Your Honor, in all candor, Mr. KARSTETER, as far as I am aware, has no intention of placing the money into the Court Registry." (App. K-13). The Trial Judge thereupon entered an Order granting Default against KARSTETER on GRAHAM's Complaint for Removal of Tenant and transferring KARSTETER's Counterclaim and Crossclaim to Circuit Court. (App. L-1, 2).

On August 4, 1986, the Trial Court held a final hearing on the default. KARSTETER appeared in person for the first time, with his counsel. (App. L-5). The Court advised KARSTETER that the Court had offered to give him an opportunity to deposit the $1,460.00 into the Court Registry and that there had been a refusal to do so on the part of his counsel. The Court then asked KARSTETER's counsel to confirm his client's intention and KARSTETER's counsel indicated that the Court was correct as to the Court's previous offer and the fact that KARSTETER intended to place no money in the Registry. (App. L-6). The Trial Court then proceeded to permit GRAHAM to prove up its case and granted Final Judgment for Removal of Tenant. (App. L-8-32). At the time of the final hearing and at the time of the Trial Court's last offer to KARSTETER to deposit the $1,460.00 in the Registry, $1,460.00 represented the rent which had accrued during the proceedings.

KARSTETER took an appeal of the Final Judgment to the Circuit Court for the Eleventh Judicial Circuit of Florida. KARSTETER's only point on appeal was that the Trial Judge did not declare Florida's Rent Deposit Statute unconstitutional. The Circuit Court, sitting in its appellate capacity, affirmed *per curiam* the Final Judgment for Removal of Tenant. (App. P-1).

KARSTETER then sought a Writ of Certiorari in Florida's Third District Court of Appeal. The Third District Court of Appeal denied the Petition, stating that Florida's Rent Deposit Statute "is not unconstitutional."

KARSTETER next urged the Florida Supreme Court to exercise its discretionary jurisdiction to accept his case for review. The Florida Supreme Court declined to do so. (App. P-8, 9).

KARSTETER now urges this Honorable Court to review the decisions of the four Florida courts below, none of which has accepted his contentions.

SUMMARY OF ARGUMENT

The Petitioner has failed to demonstrate any basis for invoking this Court's jurisdiction to consider his Petition for Writ of Certiorari inasmuch as these proceedings are clearly moot. These proceedings arise from an action for removal of tenant for non-payment of rent. The tenant is no longer in possession of the subject premises and never claimed to be entitled to possession after September 30, 1986, a date which has long since passed. The lease relied upon by the tenant has expired. The Florida Legislature has altered the operative statute. The exception to the doctrine of mootness known as cases "capable of repetition yet evading review" is not applicable. This Honorable Court therefore should decline jurisdiction and deny the Petition for Certiorari as moot.

In any event, the Petition fails to present a real and substantial federal question. The Petitioner seeks a declaration that Florida's Rent Deposit Statute is violative of the Federal Constitutional guarantees of due process and equal protection of the laws. This Honorable Court's prior decisions, including *Lindsey v. Normet*, 405 U.S. 56 (1972) which upheld a Rent Deposit Statute against the same constitutional attack which Petitioner would mount here, foreclose the need for further analysis or consideration of the Petition.

Finally, Florida's Rent Deposit Statute which required that tenants post the accruing rent into the Court Registry is clearly constitutionally valid as a rational means of achieving a valid state objective, namely, the protection of property owners against undeserved economic loss.

ARGUMENT

I.

PETITIONER HAS FAILED TO DEMONSTRATE ANY BASIS FOR JURISDICTION OF THIS COURT TO ISSUE A WRIT OF CERTIORARI INASMUCH AS THESE PROCEEDINGS ARE CLEARLY MOOT.

It is a fundamental principle governing this Honorable Court's jurisdiction that only actual controversies may be reviewed; proceedings before this Court will not be allowed to settle mere abstract, academic, or moot questions. *DeFunis v. Odegaard*, 416 U.S. 312 (1974); *North Carolina v. Rice*, 404 U.S. 244 (1971). See, generally, 14 American Jurisprudence, Second Edition, *Certiorari* §8. Mootness can best be defined as "the doctrine of standing set in a time frame; the requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." Monaghan, "Constitutional Adjudication: The Who and When", 82 *Yale L.J.* 1363, 1384 (1973), quoted with approval in *United States Parole Commission vs. Geraghty*, 445 U.S. 388 (1980). An appeal is moot then where reversal of the proceedings below would be ineffectual as a practical matter and of no benefit to the parties seeking it. See. e.g., *Doe v. U.S. Civil Service Commission*, 483 F.Supp. 539 (U.S. Dist. Ct. S.D. New York, 1980).

A. THE PROCEEDINGS BELOW CONSISTED OF AN ACTION TO DISPOSSESS PETITIONER AND PETITIONER IS NO LONGER IN POSSESSION.

The rule that an appellate court will not review proceedings where no useful or practical purpose can be served by granting reversal has particular application to possessory actions where the tenant is no longer in possession. Thus, the editors of *Corpus Juris Secundum* state that where the question presented by an appeal is the right of an

appellant "to possession of property, the appeal must be dismissed as presenting a moot question where the right to possession has been lost, or would have been lost before the appeal can be decided, or possession has been abandoned." 5 C.J.S. §1392, Appeal & Errors.

Where, as here, the vacating tenant seeks to mount a constitutional challenge to the landlord and tenant statutes, there is even a stronger reason for this Honorable Court to decline jurisdiction. Thus, in *Sanks v. Georgia*, 401 U.S. 144 (1970), the United States Supreme Court dismissed two tenants' appeal in an action for Removal of Tenant and refused to consider the tenants' attack on the constitutionality of Georgia's rent deposit statute where, among other things, the tenants had vacated the premises prior to the Court's determination of the appeal. Quoting from its decision in *United States v. Petrillo*, 332 U.S. 1, 5 (1947), this Court pointed out, "We have consistently refrained from passing on the constitutionality of a statute until a case involving it has reached a state where the decision of a precise constitutional issue is a necessity." 401 U.S. 144 at 151. The Court then concluded, "Manifestly, it cannot plausibly be maintained that this is such a case. Indeed, the only thing that is now apparent about this lawsuit is that the clear-cut constitutional issues it formerly presented cannot with any certainty be said to be relevant to the issues remaining in it, if, in fact, any issues do remain." 401 U.S. 144 at 151.

Likewise, with the departure of KARSTETER from the premises, no clear-cut constitutional issue remains in these proceedings. Therefore, KARSTETER's Petition for Certiorari should be denied.

B. PETITIONER IS NOT ONLY OUT OF POSSESSION BUT AGREED VOLUNTARILY TO SURRENDER POSSESSION, AND DID SO, AFTER BEING GIVEN ADDITIONAL TIME.

The rule that a tenant may not appeal an adverse judgment in a possessory action where the tenant is no longer in possession is universally accepted in all jurisdictions where the tenant voluntarily departed the premises.[2]

In his brief, KARSTETER maintains that his departure was not voluntary since there was no agreement as to the departure date and since he left only because of his fear of imminent physical eviction by the Sheriff. This contention, however, is not borne out by the record which clearly shows that KARSTETER asked for some additional time in which to move out, that KARSTETER indicated that he would voluntarily vacate without the necessity of the issuance of a Writ of Possession if given such additional time, and that the parties, through counsel, agreed to an actual departure date.

> KARSTETER's ATTORNEY: Is there some time we can get—
>
> GRAHAM's ATTORNEY: How about this weekend? Can we stipulate?
>
> KARSTETER's ATTORNEY: Fine.
>
> GRAHAM's ATTORNEY: I [actually, he] will be out this weekend and we can stipulate to it on Monday.
>
> KARSTETER's ATTORNEY: Give him until the 15th, and we will be out before then and I represent that to you.
>
> Thank you, Judge. (App. L-54).

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[2]See, *Class v. Carter*, 624 P.2d 626 (Ct.App.Ore. 1980); *Allmer v. Andrews*, 386 P.2d 705 (Sp.Ct.Colo. 1963); *Vlahos v. DeLong*, 209 S.E.2d 12 (Ct.App.Ga., 1974); *Hester v. Sammons*, 126 S.E.2d 484 (Ct.App.Ga. 1962); *Barcom, Inc. v. Doll*, 119 So.2d 544 (Ct.App.La. 1960); *Soileau v. Knighten*, 423 So.2d 61 (La.App.1st Cir. 1982); and *Lee v. Tollerson*, 228 S.E.2d 595 (Ct.App.Ga. 1976).

The Court, in fact, adopted the parties' stipulation:

> THE COURT: Here are the copies of the Final Judgment entered and the Writ of Possession will not issue until August 15. (App. L-54).

KARSTETER did, in fact, vacate the premises prior to August 15, 1986, and the record reflects that no Writ of Possession ever had to be issued.

C. THE LEASE UPON WHICH PETITIONER BASED HIS ALLEGED RIGHT OF POSSESSION EXPIRED ON SEPTEMBER 30, 1986.

The Lease upon which KARSTETER based his alleged right of possession expired on September 30, 1986. KARSTETER never claimed any right to occupy the premises *after* September 30, 1986. (App. K-18, 19). A writ of certiorari directing that the Final Judgment for Removal of Tenant be set aside will not "turn back the calendar" for KARSTETER and put him back in possession for the approximate six-week period between the time he vacated and the expiration of the lease between GRAHAM and MIAMI LAKES INN. The controversy which once existed between these parties has become moot, if for no other reason, as a result of the mere passage of time. This Honorable Court has indicated that it will not sit to decide arguments after events have put them to rest. *Doremus v. Board of Education of Borough of Hawthorne,* 342 U.S. 429 (1952).

D. FLORIDA'S RENT DEPOSIT STATUTE HAS BEEN CHANGED.

As the Petitioner has indicated in his Brief, the Florida Legislature has modified Florida Statutes §83.60(2) by an amendment which took effect on October 1, 1987. A decision on the merits in this case could only effect the disposition of those pending cases, if any, governed by the pre-1987 law and would leave unaffected those cases arising after the effective date of the modified statute. A petition for certiorari to review the validity of an obsolete law is simply an

invitation to the Court to involve itself in an exercise in futility and in a purely academic pursuit. See, e.g., *Sanks v. Georgia*, 401 U.S. 144 (1970); see also, *North Carolina v. Rice*, 404 U.S. 244 (1971).

E. THE PRESENT PROCEEDINGS DO NOT FALL WITHIN THE EXCEPTION TO THE DOCTRINE OF MOOTNESS KNOWN AS CASES "CAPABLE OF REPETITION YET EVADING REVIEW."

KARSTETER does not deny that he has vacated the premises, or that the lease upon which he based his claim to possession has long expired; he claims, instead, that the present proceedings fall within the exception to the doctrine of mootness known as cases "capable of repetition, yet evading review".[3]

What KARSTETER overlooks in the first instance is that the exception to the mootness doctrine for cases which are "capable of repetition, yet evading review" requires that there be a *reasonable expectation* or *demonstrated probability* (and not a mere theoretical possibility) that the same controversy will recur between the *same complaining* parties. *Murphy v. Hunt*, 455 U.S. 478 (1982); *Weinstein v. Bradford*, 423 U.S. 147 (1975) and *Lane v. Williams*, 455 U.S. 624 (1982). KARSTETER fails to meet this requirement; that he and GRAHAM will ever enter into a landlord-tenant relationship again is a remote possibility at best. Moreover, as indicated previously, Florida's Rent Deposit Law has been changed. Now that the operative statute has been changed, any future case having similarity to the present proceedings will be governed by Florida's modified law and therefore must be attended by different constitutional analysis. KARSTETER's case itself cannot be repeated except in the highly improbable

[3]See, *e.g.*, *Moore v. Ogilvie*, 394 U.S. 81 (1969); *Southern Pacific Terminal Co. v. ICC*, 219. U.S. 498 (1911); *Roe v. Wade*, 410 U.S. 113 (1973); and *Super Tire Engineering Co. v. McCorble*, 416 U.S. 115 (1974).

event that the Florida Legislature decides to modify the state again in such fashion as to restore the pre-1987 law.

KARSTETER's reliance upon the authorities to which he cites is misplaced for a second reason; all of the cases cited by KARSTETER in his Petition involved elections, strikes, or pregnancies and therefore involved issues which became arguably moot merely because of the passage of time or because of external factors outside of the control of the litigants. Final Judgment for Removal of Tenant was entered against KARSTETER, on the other hand, and the central issue of possession became moot in his case, simply because he failed to make use of the available procedural safeguards, any one of which, if taken in timely fashion, would have prevented the case from becoming moot and would have preserved the central issue for further judicial review. KARSTETER could have (1) deposited the rent of $1,460.00 in the County Court Registry; (2) petitioned the County Court for a determination of the appropriate amount of rent to be so deposited as provided by Florida Statutes §83.60 (2); or (3) posted a supersedeas bond after Default Final Judgment as set by the County or Circuit Court and remained in possession. Since KARSTETER failed to do any of the above, he simply allowed the central issue of possession to become moot and he failed to preserve the posture of his case for further judicial review. The exception to the doctrine of mootness known as "capable of repetition yet evading review" was never intended to excuse those who seek judicial review from the responsibility for preserving the record below or for maintaining the posture of the case in order that such review can be made.

In short, if there were ever a case that was demonstrably moot, this is that case. KARSTETER has vacated the premises and has left the State of Florida. The lease upon which he based his alleged right to possession has expired. The operative statute has been changed or modified.

Since KARSTETER voluntarily vacated the premises and since he never claimed any entitlement to possession after September 30, 1986, a Writ of Certiorari issued now from this Honorable Court would be both academic and ineffectual. The posture of this case presents no necessity for judicial determination of the constitutional challenge which KARSTETER attempts to raise; indeed, the central issue of this case, namely, the entitlement to possession, is simply moot. Since the central issue or crux of this case is moot, no subsidiary or ancillary matter, such as liability for costs or attorney's fees, can save this case from mootness as a matter of law. The exception to the doctrine of mootness known as cases "capable of repetition yet evading review" has no application to these proceedings.

Accordingly, KARSTETER's Petition for Writ of Certiorari is clearly moot and should be denied by this Honorable Court.

II.

THE PETITION FOR WRIT OF CERTIORARI PRESENTS NO REAL OR SUBSTANTIAL FEDERAL QUESTION.

It is basic that a real and substantial federal question is essential to the jurisdiction of The United States Supreme Court over decisions of state courts. *Abrams v. Van Schaick*, 293 U.S. 188 (1934). It is not sufficient that the purported federal question merely be alleged. *Sawyer v. Piper*, 189 U.S. 154 (1903). In the proceedings below, KARSTETER claimed the right to live rent-free on the subject premises. He was able to do so for approximately ten (10) weeks while his claims were being adjudicated; he maintains that he would have been able to continue to do so but for the operation of Florida's Rent Deposit Statute which he claims violated his Fourteenth Amendment rights to due process of law. This Honorable Court, however, has already addressed the constitutionality of a state Rent Deposit Statute and its established precedents

foreclose the need for further analysis of the federal question purportedly presented. *Bianchi v. Morales*, 262 U.S. 170 (1926); and *Lindsey v. Normet*, 405 U.S. 56 (1972).

In *Bianchi*, this Honorable Court held that a state can, consistent with the Due Process Clause of the Fourteenth Amendment of the United States Constitution, provide separate summary proceedings to determine the right to possession of real property and exclude therefrom all claims and defenses which the occupant may have against the owner of the property except for payment. See also, *Grant Timber & Mfg. Co. v. Gray*, 236 U.S. 133 (1915).

In *Lindsey*, this Court considered the constitutionality of Oregon's Rent Deposit Statute with respect to essentially the same attacks mounted here, namely, that the statute allegedly denied due process or equal protection of the laws. The Court expressly upheld the statute, striking down as violative of due process only that portion of the Oregon Statute (having no analogue in the Florida Statutes) that specifically set the post-judgment supersedeas bond at twice the amount of rent. The Court stated:

> There are unique factual and legal characteristics of the landlord-tenant relationship that justify special statutory treatment inapplicable to other litigants. The tenant is, by definition, in possession of the property of the landlord; unless a judicially supervised mechanism is provided for what would otherwise be swift repossession by the landlord himself, the tenant would be able to deny the landlord the rights to income incident to ownership by refusing to pay rent and by preventing sale or rental to someone else. Many expenses of the landlord continue to accrue whether a tenant pays his rent or not. Speedy adjudication is desirable to prevent subjecting the landlord to undeserved economic loss. . . *Lindsey v. Normet*, 405 U.S. 56, 72-73.

Indeed, the Court, in *Lindsey* noted that *failure* to require an escrow of rent from a tenant *pendente lite* could be said to deprive the *landlord* of his income and his property without the process of law. *Lindsey, supra*, at 67 n.13. In this connection, the Court noted, "Nor should we forget that Constitution expressly protects against confiscation of private property or the income therefrom." *Lindsey, supra*, at 74.

KARSTETER claims to find support in *Lindsey* for his contentions. He quotes from that case as follows:

> "While the court upheld the majority of the challenged Oregon statute, it also specifically recognized that *due process requires that there be an opportunity to present every available defense*, 405 U.S. at 66, 92 S.Ct. at 870, 31 L.E.D.2d at 46." KARSTETER's Brief, page 13.

In *Lindsey*, however, this Honorable Court went on to qualify the above statement in such fashion as to show why rent deposit statutes do not violate due process:

> "Due process requires that there be an opportunity to present every available defense." *American Surety Co. v. Baldwin*, 287 U.S. 156, 168 (1932). See also *Nickey v. Mississippi*, 292 U.S. 393, 396 (1934). Appellants do not deny, however, that there are available procedures to litigate any claims against the landlord cognizable in Oregon. Their claim is that they are denied due process of law because the rental payments are not suspended while the alleged wrongdoings of the landlord are litigated. We see no constitutional barrier to Oregon's insistence that the tenant provide for accruing rent pending judicial settlement of his disputes with the lessor. *Lindsey, supra*, at 66.

There are clearly available procedures in Florida for KARSTETER "to litigate any claim" against his former landlord or former employer. Indeed, KARSTETER filed a

Counterclaim and Crossclaim both of which were left standing and are now awaiting jury trial. A tenant who fails to comply with the Florida Rent Deposit Law only loses his right to possession, he does not lose the right to litigate any cognizable claim. *K.D. Lewis Enterprises Corporation v. Smith*, 445 So.2d 1032 (Fla. 5th DCA 1984).

In this connection, it should also be noted that KARSTETER lost possession because of his adamant refusal to place *any* funds in the Registry, whether for accrued rent or for rent as it would accrue during the proceedings. By the time Default Final Judgment was entered against him, the amount of rent required by the Trial Court to be deposited represented only the rent *accruing* during the trial proceedings. The Trial Court, it will be recalled, set the required deposit in the amount of $1,460.00 on July 9, 1986, and *never increased the amount.* (App. K-5). KARSTETER was subsequently given multiple opportunities to deposit that amount and to proceed to the jury trial he purportedly wanted. (App. K-11, 12; L-6). When KARSTETER rejected the Court's last offer, on August 4, 1986, to post $1,460.00 into the Registry, the total rent owning at that time was $2,190.00, representing rent due for the months of June, July and August, 1986 at $730.00 per month; of this amount, $1,460.00 represented rent *accruing during the pendency of the proceedings*, namely, rent in the amount of $730.00 which accrued on July 1, 1986, and rent in the amount of $730.00 which accrued on August 1, 1986. The rent, according to the Lease, was payable in advance on the first day of each month. App. A-6. See, also, F.S. 83.46(1). Therefore, Default Final Judgment was entered against KARSTETER for failure to pay "accruing rent" or the rent as it accrued during the proceedings.

Finally, in his Brief, KARSTETER attempts to distinguish the Oregon Statute which was upheld in *Lindsey* from the Florida Rent Deposit Statute by pointing out that failure to comply with the Oregon Statute forced the tenant

to go to Trial in two days whereas failure to comply with the Florida Statute restricts, at least facially, the issues at trial to payment. The distinction, however, is more apparent than real. First, it is doubtful that any defense more complicated than "payment" could be presented effectively in only two days. Secondly, in actual practice and as indicated by Florida caselaw, Florida tenants are able to raise, and to be heard upon, many other defenses without first having to deposit any funds into the Court Registry.[4] Moreover, additional defenses may be raised by Motion for Re-Hearing or New Trial or by Motion to Set Aside Final Judgment, without making any deposit of funds into the Registry.[5] Most significantly, of course, what KARSTETER overlooks is that this Honorable Court has already held that a state may constitutionally restrict the issues to be decided in summary proceedings for recovery of real property to "payment". *Bianchi v. Morales*, 262 U.S. 170 (1926); *Grant Timber & Mfg. Co. v. Gray*, 236 U.S. 1233 (1915).

In the words of one leading commentator on Florida Landlord and Tenant Law who has analyzed its federal constitutional consequences:

> It seems obvious that Florida's statute has been approved by proxy in *Lindsey v. Normet, supra*, and that any constitutional challenge to the statute would be foreclosed. Boyle, *Landlord's Remedies in Florida*, p. 172.

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[4]See, e.g., *Mihaley v. White*, 15 Fla. Supp. 2d 57 (Cty. Ct. Sarasota Cty. 1986); *Wallace v. Shaw*, 20 Fla. Supp. 2d 107 (Cty. Ct. Palm Beach Cty. 1986); *Johnson v. Kalliorinen*, 16 Fla. Supp. 2d 86 (Cty. Ct. Palm Beach Cty. 1986).

[5]See Florida Statute §51.011 and Rule 1.540, Florida Rules of Civil Procedure.

Where the previous decisions of the United States Supreme Court clearly foreclose further analysis of the issue to be reviewed, no real or substantial federal question is presented and this Court should deny certiorari.[6]

Thus, this Honorable Court should deny KARSTETER's Petition for Certiorari.

III.

FLORIDA'S RENT DEPOSIT STATUTE IS CONSTITUTIONALLY VALID AS A RATIONAL MEANS OF ACHIEVING THE VALID OBJECTIVE OF PROTECTING PROPERTY OWNERS FROM UNDESERVED ECONOMIC LOSS.

Historically, and prior to the enactment of the Florida Residential Landlord and Tenant Act (of which F.S. §83.60(2) is a part), Florida tenants were simply unable to raise any substantive defense to an action for possession for non-payment except for the defense of actual payment.[7] The Residential Landlord and Tenant Act, which was passed in 1973, can be fairly characterized as a revolutionary advance in tenants' rights. By that legislation, tenants were granted, for the first time, the right in removal actions to raise "any defense, whether legal or equitable", including the landlord's material non-compliance with the landlord's statutory duties. F.S. §83.60(1) and F.S. §83.51. The Act also eliminated any doubt about the availability of "self-help"; henceforth, it would be clear the Florida property owners were required to

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[6] *California Water Serv. Co. v. Redding*, 304 U.S. 252 (1938); *Minneapolis, St. P. & S. Ste M.R. Co. v. C.L. Merrick Co.*, 254 U.S. 376 (1920); and *Leonard v. Vicksburg S. & P.R. Co.*, 198 U.S. 416 (1905).

[7] *Brownlee v. Sussman*, 238 So.2d 317 (Fla. 3d DCA 1970); *Nevins Drug Co., Inc. v. Bunch*, 63 So.2d 329 (Fla. 1953); *Rader v. Prather*, 130 So. 15 (Fla. 1930); and *Masser v. London Operating Co.*, 145 So. 79 (Fla. 1932).

resort to legal process to recover possession of rental property except in cases of surrender or abandonment. F.S. §83.59(3). Consequently, viewed in its historical context, the Florida Rent Deposit Statute (F.S. §83.60(2)) does not represent a curtailment of any rights enjoyed by tenants at the time of the enactment of either the Florida or the United States Constitutions. Instead, it simply provides for a statutory showing of good faith on the part of the tenant, as a procedural prerequisite, to the raising of defenses not hitherto available to tenants in possessory actions. The defenses in question, if not raised in good faith, could easily be used to destroy the summary nature of the proceedings and to inflict undeserved economic loss on Florida property owners.

Florida Statutes §83.60(2) obligates the Court to notify the tenant of the requirements of the Rent Deposit Statute. The version of the statute appearing in the Petitioner's Brief omits the key language in this respect. The statute actually provided at all material times as follows:

> In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent which accrues during the pendency of the proceeding, when due. *The court shall notify the tenant of such requirement.* Failure of the tenant to pay the rent into the registry of the court as provided herein constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default. (Emphasis added to the language omitted from the version of the statute appearing in the Appellant's Brief).

KARSTETER was notified of the requirement by a number of means. The summons served upon him contained the following "Cautionary Warning":

CAUTIONARY WARNING

> If this is an action for possession of a dwelling unit based upon non-payment of rent and if you interpose any defense to this action other than payment of rent, you must pay into the registry of the County Court the accrued rent as alleged in the attached Complaint or as may be determined by the Court and the rent which accrues during the pendency of these proceedings when due. Your failure to pay rent into the registry of the County Court as stated above constitutes an absolute waiver of your defenses other than payment and the Plaintiff will be entitled to an immediate Default.

Thereafter, GRAHAM, although not required to do so, provided KARSTETER with written Notice of Demand to Deposit Rent into the Registry of the Court. (App. F-1, 2). The Court also orally advised KARSTETER of the statutory requirement on July 9, 1986 (App. K-4), on July 22, 1986 (App. K-11) and August 4, 1986 (App. L-6).

Florida Statutes §83.60(2) provides tenants with a meaningful opportunity to be heard and does not deny them due process of law. It is simply not true that, as KARSTETER maintains in his Brief, F.S. 83.60(2) "totally deprives the tenant of any trial whatsoever". KARSTETER's Brief, page 14.

First, if the tenant simply alleges payment, no deposit need be advanced (F.S. 83.60(2)) and the tenant is entitled to a full trial before the Court or, if he elects, before a jury. F.S. §51.011. Secondly, the tenant may raise, by motion, any matter relating to the Court's jurisdiction or the sufficiency of the pleadings and be heard upon such motion without ever posting funds into the Court Registry. Thus, Florida courts have consistently held that tenants do not need to deposit funds into the Registry pursuant to F.S. §83.60(2) where the

tenants seek to determine the validity of the three-day notice, the validity of service of process or the sufficiency of the landlord's complaint. *Mihaley v. White*, 15 Fla. Supp.2d 57 (Cty. Ct., Sarasota Cty. 1986); *Wallace v. Shaw*, 20 Fla. Supp.2d 107 (Cty. Ct., Orange Cty. 1986); *Johnson v. Kalliorinen*, 16 Fla. Supp.2d 86 (Cty. Ct. Palm Beach Cty. 1986). If any such motion is filed, the time for filing an Answer is tolled and the Court hears and determines all issues presented by the motion separately and prior to Trial. *Mihaley v. White, supra.* KARSTETER filed no such motion.

Thirdly, if a tenant feels aggrieved by the amount of rent specified by the landlord as due and owing, the tenant may file a Motion to Determine the Amount of Rent to be Deposited into Court. F.S. §83.60(2) specifies, it will be recalled, that the amount to be deposited into the Court Registry is "the accrued rent as specified in the complaint *or as determined by the Court.*" F.S. §83.60(2). KARSTETER simply did not avail himself of this procedure.[8] Instead, he repeatedly refused to place any money into the Registry and demanded that a jury be empanelled to determine the threshold issue of the amount of rent, if any, to be deposited *pendente lite.* See Petitioner's Brief page 22.

Finally, after entry of Final Judgment, Florida law provides several procedures for obtaining additional hearings and for post-judgment relief. First, the tenant may file a Petition for Re-Hearing or New Trial after Final Judgment. Florida Stautes §51.011(4). If such a motion is filed, no Writ of Possession can issue until the motion has been judicially determined. Rule 1.550(a), Florida Rules of Civil Procedure. No bond or deposit of funds in the Court Registry is required for the filing of a Motion for Re-Hearing or New Trial. See Florida Statutes §51.011.

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[8]For a case illustrating the proper procedure to be employed by the tenant to obtain such determination see, *Hialeah Housing Authority v. Rodriguez*, 25 Fla.Supp.2d 4 (Cty. Ct. Dade Cty. 1987).

Secondly, and even after a Motion for Re-Hearing or New Trial has been presented and denied, the tenant can re-apply to the Trial Court pursuant to Rule 1.540, Florida Rules of Civil Procedure and obtain relief from judgment on any of the following grounds:

> (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment or decree is void; (5) the judgment or decree has been satisfied, released or discharged or a prior judgment or decree upon which it is based has been reversed or otherwise vacated or it is no longer equitable that the judgment or decree should have prospective application.

No bond or deposit of funds into the Registry of the Court is required for an application to set aside a Default Final Judgment pursuant to Rule 1.540.

KARSTETER filed no Motion for Re-Hearing or New Trial and made no application to set aside the Default Final Judgment pursuant to Rule 1.540. Instead, he stipulated with GRAHAM that he would vacate the premises by a date certain, waiving his post-judgment remedies. (App. L-54).

Contrary to KARSTETER's contentions, failure to comply with F.S. §83.60(2) does not deprive Florida tenants of access to the courts. As the Fifth District Court of Appeal of Florida has made clear:

> "[The tenant] loses only his right to retain possession of the premises if he fails to pay rent to the landlord or into the Registry of the Court. Any cause of action against the landlord to which he

> may be otherwise entitled is still available to him." *K.D. Lewis Enterprises Corporation v. Smith*, 445 So.2d 1032 (Fla. 5th DCA 1984) at 1035.

In so holding, the Court explained the rationale and practical necessity for Florida's Rent Deposit Statute:

> As now framed, the landlord may recover his rent should the tenants' suit have no legal basis. On the other hand, should the tenants' suit have merit, the rent is not lost to them. To follow the course suggested by the tenants would enable a devious tenant to live rent free during the litigation, if he could frame a legally sufficient pleading. We see no more reason to expect a landlord to continue furnishing housing without rent than to expect an oil supplier to continue furnishing oil without payment during a period of litigation. 445 So.2d 1032 at 1035.

See also, *Mahdi v. Poretsky Management, inc.*, 433 A.2d 1085 (D.C.App. 1981) and *Davis v. Rental Associates*, 456 A.2d 820 (D.C.App. 1983).

Florida Statutes §83.60(2) did not unconstitutionally deny KARSTETER access to the Courts; it merely prevented him from living "rent free during the litigation." *K.D. Lewis Enterprises Corporation v. Smith*, 445 So.2d 1032 at 1035.

Finally, the requirements of Florida Statutes §83.60(2) and the other landlord-tenant statutes have to be understood within the general context of Florida Landlord and Tenant Law and the traditional leniency which Florida courts have shown to defaulting tenants. Thus, while Florida Statutes §83.56(3) facially provides that the landlord may "terminate" the tenancy three-days after service of written notice of default and Florida Statutes §83.60(2) provides that the landlord is entitled to an "immediate" default if the tenant raises any defense other than payment and fails to pay the accrued rent or rent as determined by the court, Florida

courts have traditionally provided relief to tenants against forfeiture of leases on the condition they tender payment of the rent arrearages with interest.[9] Indeed, Florida's special "equity of redemption" can be exercised by the tenant at any stage of the proceedings and even after Final Judgment for Removal of Tenant has been entered.[10] KARSTETER never made any attempt to repay rent for the time he occupied GRAHAM's premises.

Florida Statutes §83.60(2) does not operate harshly on the tenant since it provides only for a temporary relinquishment of funds into the custody of the Court during the Summary Proceeding and no deposit is necessary where the tenant alleges prior payment. Since the Summary Proceeding cases are advanced on the Court calendar (F.S. §83.59 (2)), the tenant need only relinquish the funds for a short time. Moreover, contrary to what a literal reading of the statute might imply, the Florida caselaw has clearly established that the funds need not be deposited into the Court Registry until the actual time of trial. *Ash v. Dade County*, 18 Fla. Supp. 2d 185 (Cir. Ct., App. Div., Dade Cty. 1986). In addition, the funds are safeguarded since they are held by a neutral third party, namely, the Court. Without payment of rent and without making any deposit into the Court Registry, KARSTETER was able to take discovery, including depositions (App. O), and to prolong the final disposition of the proceedings from June 6, 1986, to August 9, 1986, during all of which time he remained in possession. All he had to do to be granted the jury trial he purportedly sought and to obtain additional delay which would thereby be occasioned was to deposit $1,460.00 of the $10,000.00

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[9]*Rader v. Prather*, 100 Fla. 591, 130 15 (Fla. 1930); *Dinn v. Edmonson*, 428 So.2d 286 (Fla. 4 DCA), pet.rev.den. 440 So.2d 351 (Fla. 1983); *Herrell v. Seyforth, Shaw, Fairwheather*, 491 So.2d 1173 (Fla. 1 DCA 1986).

[10]*Rader v. Prather, supra*. See, *Boyle, Landlord's Remedies in Florida*, (1987), Chpt. 8 "Relief From Forfeiture, The Eviction Paradox".

severance payment he had previously received from his former employer. (App. K-7). KARSTETER makes no showing that he was "indigent" as indeed he cannot.

KARSTETER also maintains that Florida's Rent Deposit Statute is unconstitutional because it deprived him of the right to jury trial. KARSTETER's loss of his right to jury trial, however, was entirely self-inflicted and resulted solely from his adamant refusal to place *any* monies into the Court Registry. The right to jury trial in Florida can be waived. See e.g., *In re: Shambow's Estate*, 15 So.2d 837 (Fla. 1943). Just as the right to jury trial may be waived by failure to make timely demand for same, a litigant may also lose the right to jury trial in a landlord and tenant case by failing to make timely deposits into the Court Registry. F.S. §83.60(2). KARSTETER, in fact, waived his right to jury trial by failing to take the required procedural steps to preserve his right to jury trial. He could have sought a determination by the Court of the amount of rent owing or he could have deposited the rent demanded into the Court Registry. F.S. §83.60(2). If he had done either, he would have preserved his right to jury trial. In fact, he did neither and as a result Default was entered against him. No one is entitled to a trial, by jury or otherwise, if there is no triable issue.

KARSTETER's contention that F.S. §83.60(2) unconstitutionally deprives tenants of their right to jury trial was carefully considered and specifically rejected by the Court in *Multach v. Snipes*, 15 Fla. Supp. 2d 52 (Cty. Ct., Palm Beach Cty. 1986). The Court's logic and reasoning should recommend themselves to this Honorable Court:

> Defendant objects to the application of Section 83.60(2) to default her, contending that the statute violates Article I, Section 22 of the Florida Constitution. The constitutional provision provides in pertinent part that the "right of trial by jury shall be secure to all and remain inviolate."

> Section 83.60(2) does not impair Defendant's *right* to a trial by jury which is available and was honored upon appropriate demand. Rather, Section 83.60(2) conditions the right upon payment of rent into the Registry of the Court during the pendency of the proceedings. Just as a Court may enter a default for failure to plead or to comply with discovery orders, so may a statute condition a tenant's presentation of defenses on the deposit of unpaid and accruing rent into the Court registry. See, *Mahdi v. Poretsky Management, Inc.*, 433 A. 2d 1085 (D.C. 1981). 15 Fla. Supp. 2d 52 at 55.

In his Brief, KARSTETER concedes that the right to trial by jury in civil cases that was created by Seventh Amendment is not applicable to the States. KARSTETER's Brief, p. 17. He maintains, however, that when "the State of Florida established . . . the right of trial by jury in civil cases, *any* deprivation of such right would be a denial of due process under amendment XIV to the *U.S. Constitution.* KARSTETER's mistake, of course, is to believe that either the "due process" clause or the "equal protection" clause compels a state to treat its citizens in identical fashion in all circumstances. Tenants in dispossessory action may constitutionally be afforded modes or mechanisms of trial which differ from those provided to other litigants. As this Court held in *Lindsey, supra*, "Classifying tenants differently will offend the equal protection safeguard 'only if the classification rests on grounds which are wholly irrelevant to the achievement of the State objective,' [citing] *McGowan v. Maryland*, 366 U.S. 420 (1961). . ." 405 U.S. 54 at 70. KARSTETER simply makes no such showing.

KARSTETER has sought to rely upon the Maryland case of *Lucky Ned Pepper's Ltd. v. Columbia Park and Recreation Association,* 494 A.2d 947 (Md. App. 1985), but this reliance is clearly misplaced. In *Lucky Ned Pepper's Ltd.,* the Court held that Maryland's Rent Deposit statute *was constitutional*

to the extent it conditioned jury trial in landlord and tenant actions upon full payment of rent in the Registry as the rent accrues. The Court stated flatly, "We do not suggest, however, that a statutory provision requiring the escrowing of rents as they become payable during the pendency of a jury trial is . . . unconstitutional." 494 A.2d 947 at 953. The Court quoted extensively from *Lindsey v. Normet, supra,* and concluded:

> . . . [A] tenant's request for a jury trial, like a request for continuance, makes it impossible to provide a lessor with quick relief. Therefore, we believe that if a tenant is to remain in possession of the landlord's property, pending resolution of a jury trial, it is not unreasonable to request that the tenant pay for the privilege of remaining on the landlord's premises. 494 A.2d 947 at 953.

While it is true that the Court in *Lucky Ned Pepper's, Ltd.*, held *unconstitutional* the particular statutory mechanism requiring the posting of past due (accrued) rents, it should be recalled that KARSTETER posted no rent at all, either the accruing rent or the accrued, into the Court Registry. Indeed, he adamantly and repeatedly refused to deposit *any* rent at all. All the Trial Court required was that KARSTETER deposit the amount accruing during the pendency of the proceedings. Having failed and refused to deposit even the accruing rent, KARSTETER is simply in no position to avail himself of the ruling in *Lucky Ned Pepper's, Ltd.* Final Judgment was not entered against him because he failed to deposit the accrued rent; Final Judgment was entered against him because he would not deposit any rent at all. Moreover, a close reading of *Lucky Ned Pepper's, Ltd.*, reveals that the Court's objection to Maryland's Rent Deposit Statute was that it "presupposes a determination that the [accrued rent] is owed." *Lucky Ned Pepper's, Ltd.*, 494 A.2d 947 at 951. In Florida's Rent Deposit Statute, on the other hand, and as indicated above, there is a built-in

procedural safeguard enabling the tenant to obtain a judicial determination of the amount to be deposited, if the tenant takes issue with the accrued rent demanded by the landlord. F.S. §83.60(2). It was this procedure which KARSTETER failed to invoke in neglecting to file a Motion to Determine Amount of Rent to be Deposited into Court Registry and it was this failure, together with his failure and refusal to deposit the accruing rent, which led to entry of Default and Default Final Judgment against him. Clearly, *Lucky Ned Pepper's, Ltd.*, provides KARSTETER with no assistance in the particular factual posture of this case.

In summation, KARSTETER failed to pay the accrued rent into the Court Registry as demanded by the Landlord and failed to invoke the procedure for obtaining a judicial determination of the amount due. He failed to pay the accruing rent and, indeed, adamantly refused to post into the Court Registry any deposit monies at all, despite the lower Court's repeated extentions of time within which to do so. In so failing and refusing, KARSTETER, at length, suffered Default Final Judgment to be entered against him pursuant to Florida Statute §83.60(2). The Trial Court, however, left intact both KARSTETER's Counterclaim and Crossclaim. Accordingly, KARSTETER lost the "right" to remain in possession of his adversary's property without payment of rent, but he did not lose his access to the court to pursue his claims for damages.

The statute which led to KARSTETER's fate is not a harsh or oppressive measure. It provides only for the temporary relinquishment of funds for short duration as a showing of good faith and as a reasonable and necessary measure to prevent undeserved economic loss on the part of Florida property owners, given the unique characteristics of the landlord-tenant relationship. Viewed in its historical perspective, the statute does not represent a curtailment of the rights enjoyed by tenants at the time of the enactment of either the Federal or Florida Constitutions but is instead

a reasonable safeguard and counter-balance to the vastly increased power of tenants to raise defenses in possessory actions brought about by the enactment of the Florida Residential Landlord and Tenant Act in 1973.

The United States Supreme Court has specifically upheld against constitutional attack a Rent Deposit Statute. *Lindsey v. Normet, supra.* The vast majority of other courts have consistently upheld legislation requiring tenants to pay rent into Court Registries during possessory actions as non-violative of either state or Federal Constitutional guarantees.[11]

Florida Statutes §83.60(2), like all validly enacted state statutes, comes to this Honorable Court clothed with a presumption of constitutionality. *Davies Warehouses Co. v. Bowles*, 321 U.S. 144 (1944). That presumption is fortified in this case by common sense, the imperative of rendering justice to property owners as well as tenants, and the specific pronouncements of this Honorable Court as well as the vast majority of lower courts who have considered and rejected the same arguments which KARSTETER now advances.

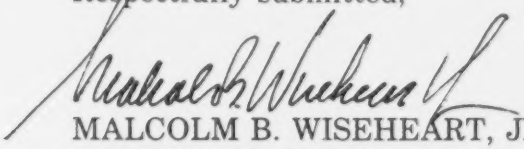
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[11] *Farrell v. Drew*, 19 N.Y.2d 486; 281 N.Y.S.2d 1, 227 N.E.2d 824 (1967); *Department of Building v. Saltzer*, 16 N.Y.2d 915, 264 N.Y.S.2d 701, 212 N.E.2d 154 (1965); *Ten West 28th Street Realty Corp. v. Moerdler*, 52 Misc. 2d 109, 275 N.Y.S.2d 144 (1966); *Milchman v. Rivera*, 9 Misc. 2d 347, 240, N.Y.S.2d 859, *app dismd* 13 N.Y.2d 1123, 247 N.Y.S.2d 122, 196 N.E.2d 555 (1963); *Schaeffer v. Montes*, 37 Misc. 2d 722, 233 N.Y.S.2d 444 (1962); *Emray Realty Corp. v. De Stefano*, 5 Misc. 2d 352, 160 N.Y.S.2d 433 (1957); *De Paul v. Kauffman*, 441 Pa. 386, 272 A.2d 500, (1971); *Davis v. Rental Associates, Inc.*, 456 A.2d 82 (1983, Dist.Col.App.); *Mahdi v. Poretsky Management, Inc.*, 433 A2d 1085 (1981, Dist.Col.App.). See, *Officenters International Corp. v. Interstate North Associates*, 166 Ga.App. 93, 303 S.E.2d 292 (Ga.App. 1983) cert.den. 464 U.S. 937 (1983); *Oaks v. District Court of State of R.I.*, 631 F.Supp. 538 (D.R.I. 1986); and *First Sav. Bank F.S.B. v. Whittley*, 751 S.W.2d 60 (Ct.Ap. W.D. 1987).

CONCLUSION

For the foregoing reasons, Respondent, GRAHAM, prays that this Honorable Court deny the Petition for Certiorari, filed by Petitioner, KARSTETER, and that the Court assess all costs, including reasonable attorneys fees, pursuant to Florida Statute §83.48 and §59.46, in favor of the Respondent and against the Petitioner.

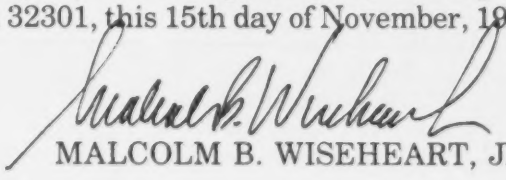
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three (3) copies of the foregoing Brief in Opposition to Petition for Certiorari were mailed to Roland Gomez, Esq., Law Offices of Roland Gomez, Attorneys for Petitioner, 8100 Oak Lane, Suite 400, Miami Lakes, Florida 33016 and to Jerry Currington, Esquire, Assistant Attorney General, Department of Legal Affairs, The Capitol, Tallahassee, Florida 32301, this 15th day of November, 1988.



MALCOLM B. WISEHEART, JR.